

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA

v.

RODOLFO A. CUELLAR, JR.
#25755-077,

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CRIMINAL NO. 3:94-CR-062-O-1

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The Court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that Defendant's motion to reduce sentence, Crim. Doc. 406, is **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction.

The Court prospectively **CERTIFIES** that any appeal from the order dismissing the motion to reduce sentence would not be taken in good faith. *See* [28 U.S.C. § 1915\(a\)\(3\)](#); [FED. R. APP. P. 24\(a\)\(3\)](#). In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See* [Baugh v. Taylor](#), [117 F.3d 197, 202](#) n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. [Howard v. King](#), [707 F.2d 215, 220](#) (5th Cir. 1983).¹ In the event of an appeal, Defendant may challenge this certification by filing a separate motion to proceed *in forma*

¹[Federal Rule of Appellate Procedure 4\(a\)](#) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.

pauperis on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; [FED. R. APP. P. 24\(a\)\(5\)](#).

SO ORDERED this 23rd day of June, 2017.



Reed O'Connor
UNITED STATES DISTRICT JUDGE